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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

File: LIN-99-243-52559 Office: Nebraska Service Center

Date: MAY 22 2001

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:

Identifying data deleted to
protect clearly unwarranted
privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a recording studio. The beneficiary is an audio engineer. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in the arts, in order to employ him as an audio/recording engineer in the United States for a period of three years.

The director denied the petition finding that the petitioner failed to demonstrate that the beneficiary satisfies the regulatory standards as an alien of extraordinary ability in the arts.

On appeal, counsel for the petitioner argues that the center director erred and that the evidence submitted satisfies more than the necessary three regulatory criteria necessary to establish eligibility.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

At issue in this matter is whether the petitioner has established that the beneficiary is an alien of extraordinary ability in the arts within the meaning of this provision.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

Extraordinary ability in the field of arts means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well known in the field of arts.

8 C.F.R. 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's

occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The director carefully reviewed the record in this matter. The beneficiary is a native and citizen of Japan who last entered the United States in F-1 classification as a nonimmigrant student. The beneficiary's resume reflects that he received an Associate of Arts degree in audio production in December 1997 and began employment with the petitioning recording studio in February 1998. In support of the claim that the beneficiary has extraordinary ability in the arts, the petitioner submitted, in part, twelve letters from recording artists or professionals in the field opining that the beneficiary has extraordinary ability as a recording engineer. Counsel argues that those letters demonstrate that the petitioner has satisfied at least five of the above criteria.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial. Here, there is no evidence that the beneficiary has received an award equivalent to those listed at 8 C.F.R. 214.2(o)(3)(iv)(A) above. Nor does the record show that the beneficiary meets at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iv)(B).

The testimonials submitted into evidence may be considered to address #5 above pertaining to recognition from experts in the field.

The evidence is not persuasive that the beneficiary's duties as an engineer have included a leading role in a production that has a distinguished reputation as evidenced by critical reviews under #1 above. Nor is there any evidence of any national or international recognition of the beneficiary's achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers or trade journals under #2 above. The record is equally insufficient to establish that the alien has performed in a lead role for organizations that have a distinguished reputation or that the petitioning studio satisfies that criteria as evidenced by articles in newspapers or trade journals under #3 above. As noted by the director, there is no evidence that the beneficiary has achieved critically acclaimed success or commanded a high salary under #4 and #6 above.

It must be noted that these provisions are only documentary requirements and merely addressing them does not establish eligibility for the benefit sought. The evidence of record must be examined as a whole. The beneficiary is a young engineer with less than two years of professional experience. While highly regarded by the professionals with whom he has worked, there is no evidence that the beneficiary has reached a level of achievement and recognition "substantially above" that ordinarily encountered in the profession or that he could be described as prominent or renowned in the field.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for extraordinary ability, the statute requires proof of "sustained" national or international acclaim and a demonstration that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

The denial of this petition is without prejudice to the filing of a petition on behalf of the beneficiary for any other immigration benefit for which he may be eligible.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.